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| APPLICATION NO.                | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 09/933,957                     | 08/20/2001  | Jeff Jacob Brauer    | Q92694              | 7951             |
| 72875                          | 7590        | 12/17/2007           | EXAMINER            |                  |
| SUGHRUE MION, PLLC             |             |                      | VAN BRAMER, JOHN W  |                  |
| 2100 Pennsylvania Avenue, N.W. |             |                      | ART UNIT            |                  |
| Washington, DC 20037           |             |                      | PAPER NUMBER        |                  |
|                                |             |                      | 3622                |                  |
|                                |             |                      | NOTIFICATION DATE   | DELIVERY MODE    |
|                                |             |                      | 12/17/2007          | ELECTRONIC       |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@sughrue.com  
kghyndman@sughrue.com  
USPatDocketing@sughrue.com

|                              |                        |  |                     |  |
|------------------------------|------------------------|--|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> |  | <b>Applicant(s)</b> |  |
|                              | 09/933,957             |  | BRAUER, JEFF JACOB  |  |
|                              | <b>Examiner</b>        |  | <b>Art Unit</b>     |  |
|                              | John Van Bramer        |  | 3622                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21,22,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21,22,24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

1. The amendment filed on October 11, 2007 has not cancelled, or amended any claims. Additionally, no new claims were added. Thus, the currently pending claims considered below are Claims 21-22 and 24-25.
2. The Declaration filed on October 11, 2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the rejection of Claims 21, 22, 24, and 25 using the Forward (U.S. Patent Number: 6,578,011) in view of Good et al. (U.S. Patent Number: 6,314,404) references.
  - a. In response to applicant's argument that Forward and Good are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the applicants invention, the Forward reference and the Good reference are all directed towards the housing market.
  - b. Exhibits 51-212 disclose articles pertaining to the housing market. While many of the dates of these disclosures can not be used to determine analogous art

because the dates of publication are after the priority date of the applicant's application, the examiner has considered all of the exhibits can find no disclosure that indicates that real estate rental and real estate sales are not analogous since they are both directed to servicing the needs of consumers in securing housing. For example, Exhibit 51, published August 12, 2001 (Note: The applicant's provisional application provides it with a priority date of August 21, 2000), teaches the housing market in Richmond Virginia and mentions both the purchase and renting of property. Thus the exhibit supports the examiners assertion that the Forward and Good references are analogous to the applicant's invention. Of the exhibits published prior to the priority date of the Applicant's invention, Exhibit 68, published July 12, 2000 teaches that the internet site Homestores.com family of websites includes SpringStreet.com, Realtor.com, and HomeBuilder.com. According to the article, SpringStreet.com is a full service apartment rental site, Realtor.com is a site for buying and selling new and existing homes for sale, and HomeBuilder.com is the web's most popular resource for new home buying and building. Thus Exhibit 68 supports the examiners assertion that real estate rental and real estate sales are analogous art because they are both directed towards servicing the housing market. Finally, Exhibit 155, published April 26, 1997, teaches that a customer who wished to secure housing from the housing market can rent (lease) a home for 12 or 24 months and then purchase the same (or another) house at the end of the lease period at an agreed upon price. This mingling of finance alternative for

a house strengthens the examiner's assertion that real estate sales and real estate rental are analogous arts because they are both part of the housing market.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 21, 22, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forward (U.S. Patent Number: 6,578,011) in view of Good et al. (U.S. Patent Number: 6,314,404).

Claim 21: Forward discloses a computer implemented real estate method, comprising:

- a. Creating, at a real estate host computer, a client profile relating to a user. (Col 7, lines 45 – 50 and Col 8, lines 18 – 23)
- b. Receiving, from the user, property search criteria. (Col 5, lines 3 – 19)
- c. Retrieving descriptions related to real estate matching the property search criteria, including a brief narrative, and one or more photographs for display to the user. (Col 5, lines 3 – 19)

- d. Receiving confirmation that the user entered a contract for one the real estate properties. (Col 6, lines 4 – 52)
- e. Collecting, from a real estate seller, a transaction fee. (Col 6, lines 4 – 52)
- f. Paying the user a rebate amount that has a predetermined, fixed value. (Col 6, lines 4 – 52)

While Forward does not specifically state that the invention is for rental real estate, the analogous teachings of Good et al. describe a similar real estate transaction method that is used in rental transaction. The method disclosed in Good et al contain a broker computer system which accepts rental property search criteria from a customer, returns rental real estate descriptions, receives confirmation that a user entered a lease agreement, collects a fee from the lessor, and provides the customer with an inducement (Good et al: Col 3, line 44 through Col 4, line 20 and Col 5, line 63 through Col 6, line 26). Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to include rental properties in the type of real estate transactions method disclosed by Forward. One would have been motivated to include rental properties in order to increase the volume of properties from which a customer can select, as well as increase the potential brokers revenue generating opportunities. Another motivation for including rental properties in the invention would be that such an inclusion would merely be an addition to the disclosed intended use and require little to no modification to the system disclosed.

Claim 22: Forward and Good et al. disclose the real estate rental method as set forth in claim 21, further comprising assigning the user a discount code (the incentive information inherently contains a specific code in order for the system to match the correct incentive with the proper customer), associated with a selected one of the apartments, wherein the discount code is used when the rebate is obtained. (Forward: Col 5, lines 20 – 40 and Col 6, lines 4 – 29)

Claim 24: Forward and Good et al. disclose the real estate rental method as set forth in claim 21, further comprising collecting, from the lessor of the apartment, a hosting fee for hosting a website listing of the apartment. (Forward: Col 6, lines 4 – 29)

Claim 25: Forward and Good et al. disclose the real estate rental method as set forth in claim 21, further comprising collecting, from the user, qualifying financial information. (The ability to share information gathered by the item locator system, such as credit rating, with incentive providers is disclosed)(Forward: Col 6, line 53 through Col. 7, line 26). While Forward is silent with regard to allowing the lessor to view the qualifying information of the user. It would have been obvious to one of ordinary skill in the art at the time of the invention to share the information gathered about potential tenants with lessors as well as incentive providers. One would have been motivated to do this in order to ensure that the lessor is able to make a

decision quickly with regard to renting to the customer. This would result in more timely payments from the lessor to the broker system.

### ***Response to Arguments***

5. Applicant's arguments in the Amendment filed October 11, 2007 have been considered but not persuasive.
  - a. The applicant argues that the determination of whether an art is analogous or nonanalogous can be made based upon references that are published after the priority date of an applicant's invention. In order to support such a claim the applicant has submitted the argument that when attempting to show non-obviousness though market success the sales figures secured after the filing date are considered. While, the examiner agrees that this is indeed the case, the applicant is not attempting to prove non-obviousness based on market success. Rather the applicant is arguing that the prior art used in the examiner's rejection is based upon non-analogous to the applicant's invention and thus can not be used to reject the claims. Since the analogous art used to reject a claim must be based upon what would be known by a person of ordinary skill in the art at the time the invention was made, the determination of whether the art is analogous or nonanalogous must also be based upon what would be know by a person of ordinary skill in the art at the time the invention was made. Since art published after the priority date of the applicant's invention could be read by a person of ordinary skill in the art at the time the invention was made, the contents of such



publications can not be known. As such, the disclosures can not be used to determine what constituted analogous and nonanalogous art at the time the invention was made.

- b. The applicant argues that just because the article mentions both real estate rental and real estate sales does not mean that they are analogous art. To support such an argument the applicant states that Plato discusses the physical world in terms of four elements: earth, air, fire, and water and these elements are not analogous to one another. While the examiner agrees that the mere mention of two items in a single article does not necessarily mean they are analogous, the examiner provided rationale describing the similarities between the rental and sales of real estate that exhibits 18, 19, 20, 35, and 46-50 disclose. Namely, they are dealing with providing housing to customers interested in obtaining such an item.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action

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is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Van Bramer whose telephone number is (571) 272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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